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COMMITTEE ON THE RIGHTS OF THE CHILD

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SUMMARY RECORD OF THE 244th MEETING

Held at the Palais des Nations, Geneva,
on Monday, 6 November 1995, at 3 p.m.

Chairperson: Mrs. BELEMBAOGO

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GE.95-19381 (E)

The meeting was called to order at 3.05 p.m.

CONSIDERATION OF REPORTS OF STATES PARTIES (agenda item 4) (continued)

Germany (CRC/C/11/Add.5; CRC/C/10/WP.5) (continued)

1. At the invitation of the Chairperson, Mr. Wabnitz and Mr. Haberland (Germany) took places at the Committee table.

2. The CHAIRPERSON, summarizing the debate on general measures of implementation, said that the members of the Committee had stressed that Germany had to make the question of children a priority in national legislation and in national policies and programmes. They had said that the legislative measures being taken must be continued so that national law could be adapted to the Convention. They had also emphasized the need to enhance cooperation with non-governmental organizations, on the one hand, and local authorities, on the other, and to incorporate the teaching of the Convention into school curricula and vocational training courses for adults. They had further encouraged Germany to adopt fresh measures to pursue financial mobilization in favour of children by making proposals aimed, for example, at cuts in military expenditure.

3. She invited the Committee to consider the sections of the list of issues (CRC/C.10/WP.5) entitled "Definition of the child" and "General principles", which read:

"Definition of the child

(Art. 1 of the Convention)

10. Please provide information on the minimum age for medical counselling without parental consent and the minimum legal age for sexual consent.

General principles

(Arts. 2, 3, 6 and 12 of the Convention)

11. In view of the serious nature of the manifestations of xenophobia, racism and racial discrimination which have occurred in Germany, please provide further information on the measures being taken to protect children of minorities/refugee children/asylum-seeking children/children of migrant workers from being affected by such acts.

12. Please provide clarification as to how the principle of non-discrimination is interpreted in relation to the rights of refugee and asylum-seeking children and their enjoyment of the rights guaranteed under the Convention, including with regard to health and family reunification.

13. Please provide further details of the way in which 'the best interests of the child' are taken into consideration in judicial and administrative procedures, including within the asylum process and the administration of the juvenile justice system. In addition, please elaborate further on the application of the rights of the child, in particular the principle of the best interests of the child, within family life.

14. Please provide more information on the procedures which exist for children to lodge complaints concerning the abuse of their rights."

4. Mr. HAMMARBERG, referring to article 2 of the Convention on non-discrimination, said that the problem of xenophobia existed all over Europe and in other parts of the world, but measures had been taken by the authorities to stem prejudices and their negative effects among the general public. The members of the Committee had been informed about unfortunate incidents in Germany involving mob action against groups of aliens, Gypsies and others. They had also seen that the Government had taken strong measures to deal with such problems, but it was open to question whether the measures had been sufficient. When a report by Germany had been discussed in the Committee on the Elimination of Racial Discrimination, a proposal had been made that the German Government should consider adopting comprehensive legislation dealing with that kind of social problem. He asked whether the German Government had considered that to be an interesting proposal for implementation.

5. When Germany had ratified the Convention, it had formulated a reservation in which it had distinguished between nationals and aliens and which the Committee regarded as questionable in relation to article 2. The Committee would like to know what the Government's policy was when it came to non-German children and their right to health and education. Could the Government clearly state that all foreign children in German territory had the same rights as German children in relation to such basic assets as health and education?

6. Methods of interrogating asylum-seeking minors, especially those who were unaccompanied, were important and should be adapted to take account of the fact that those persons were children. It would be interesting to know what measures were taken to ensure that an investigation in connection with an application for asylum was carried out in accordance with the Convention.

7. He also wished to know what measures were taken to ensure that the detention of children in preparation for expulsion from German territory was in keeping with the Convention and particularly with article 37 (b) on detention used only as a measure of last resort. In the Committee's view, that paragraph meant that detention should be avoided to the greatest extent possible and, if it was necessary in extreme cases for very short periods, it should take place in humane conditions. He would be interested to have some information on what had been done to implement the Convention in that regard.

8. Mrs. SANTOS PAIS said that she welcomed the importance attached by the German delegation to the inclusion of children's rights in the German Constitution. She also welcomed Germany's recognition of the fact that

awareness of the Convention among politicians was necessary. As to children born out of wedlock, however, she had doubts about the compatibility of existing German statutes and the Convention.

9. The question of refugees and asylum-seekers was an area of major interest and concern. She had taken note of the statement by the Government that minors who were refugees did not have a general right to immigrate to join their families. That happened only when necessary in order to avoid extraordinary hardship. She would like to know how that decision was considered to be compatible with the Convention and, in particular with article 7, paragraph 2, which stated that children had the right to be cared for by their parents, and article 9, paragraph 1, which stated that children should not be separated from their parents and that separation should happen only when it was necessary for the best interests of the child.

10. Referring to article 10, which stated that applications by the child or his or her parents to enter or leave a State party for the purpose of family reunification should be dealt with in a positive, humane and expeditious manner and should entail no adverse consequences for the child, she had noted from the report by Germany that the Government considered that separation would not entail adverse consequences for the child. In her view, however, the child's development might be at stake.

11. She took the statement by the German Government that, within the framework of family reunification, the swiftest possible return of a child to the care of his parents was generally in his or her best interests to mean that family reunification was a primary consideration when a child wished to join his parents who were in their country of origin, but not when the situation was the other way around. In fact, the report stated that the separation of a child from its family was particularly drastic and should be considered only as a measure of last resort. She would like to know why there was such a different attitude towards family reunification when children and parents who were German and lived in Germany were involved and why it was not so important when those involved were parents who were foreigners and children who were foreigners and wished to join their parents in Germany.

12. She also pointed out that the repatriation of a child to the country of origin in cases where parents were deceased or could no longer be located could also be incompatible with the best interests of the child. In other words, before the child was repatriated, consideration should be given to all possible measures of assistance and care.

13. Miss MASON said that, at the preceding meeting, she had wanted to find out what measures had been or were being taken to determine which principles and provisions of the Convention caused the most concern and generated the most interest among the German population. Such measures would provide an opportunity to allay the fears of Germans about such innovative ideas. They would also enable the German Government to help Germans clearly to understand the provisions of the Convention. In addition, they might encourage the formulation of policies and the amendment and reform of various legislative provisions.

14. She also wished to know what measures, apart from legal provisions, existed in Germany in respect of the right of the child to take part in deciding issues of concern to him.

15. Mrs. BADRAN asked whether the efforts made by the German Government to deal with outbreaks of xenophobia had had any impact and whether any statistics indicated whether the problem was becoming worse or better.

16. Referring to discrimination on the basis of sex, she noted that the report indicated that the Government was considering a programme to promote the equality of the sexes. In her opinion, there was also a need for machinery to monitor the situation with regard to discrimination against girls. It must be also stressed that the family had to help the child to be mature enough to express his views and understand that he was responsible for some of the decisions that he would have to take.

17. Mr. KOLOSOV recalled that Germany had had a negative attitude towards the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families at the time of its adoption. In view of the fact that there were so many migrant workers in Germany, he wondered whether a further analysis of that Convention had led the Government to consider that it might be useful rather than harmful.

18. Mr. MOMBESHORA asked whether there were any areas in Germany where there had been a threat to article 6 of the Convention and, if so, whether specific measures had been taken to solve the problem.

19. Mrs. SARDENBERG drew attention to paragraph 13 of the report, which summarized the rights and obligations of children and juveniles by age group. Since most modern studies emphasized the personal rate of development of each child, she would like to know whether any systematic review of age groups had been carried out.

20. Mr. WABNITZ (Germany) said that the question of xenophobia was a major issue that was being dealt with by the various ministries. The increase in xenophobic crimes was a source of considerable shame to the German people.

21. There were many causes for that situation and a large number of studies had been carried out. The majority of the population found those crimes to be appalling and were shocked by them. The majority of Germans and, it must be made clear, the majority of German youth were against such violence. It was of particular importance that a country such as Germany should fight those crimes. In that connection, he pointed out that action was being taken in all the federal States to deal with those horrible crimes. Extremist groups had been banned and action was being taken to coordinate measures in order to prevent xenophobic crimes in particular localities. Everyone was involved in that programme, including police forces, trade unions and employers. Efforts were being made to carry out that programme on a countrywide basis.

22. It should also be noted that Germany supported the measures adopted by the Council of Europe against xenophobia and intolerance. Germany had been one of the first countries in Europe to set up a coordinating committee and, throughout 1995, it had been organizing all sorts of measures to prevent

xenophobic crimes. It was also important that efforts should be made to deal with the problem as part of normal activity in schools and at work. There was a blatant potential for xenophobia and extremism and the authorities were very concerned about the situation, as shown in election returns.

23. The Youth and Children Services Act gave alien children and German children the same rights with regard to education, including vocational training and guidance, leisure and cultural activities. There were also special programmes to ensure that girls received the same education as boys. With regard to the responsibility of the family in respect of children's rights, children had to be prepared to play an active role in a democratic society. The family was the nucleus of society, but schools and society as a whole also had an important part to play.

24. Referring to article 19 of the Convention, he said that violence against children had reached a degree where it could no longer be ignored. For many years, that subject had not been discussed at all. Sexual abuse and violence against children were committed primarily by family members or relatives. It was all the more important to tackle the problem, which had been taboo for so long, and to make the public aware of it. On the whole, it was necessary to be patient and to have a long-term strategy in order to mobilize public opinion. There was also a need for infrastructural measures, particularly at the local level.

25. The Government was taking measures to inform children and young people of their right to freedom of expression, including the production of publications. On a related front, a law had been enacted prohibiting the publication of literature thought to be morally harmful to children, such as child pornography and that which contained graphic descriptions of violence.

26. Between 1987 and 1990, 250 to 300 cases of xenophobic violence had been recorded. That number had risen in 1992 to 2,680 and then had dropped in 1994 to 860. One reason for that change was that the so-called "silent majority" had mobilized throughout Germany, conducting protests and vigils; it had become clear that most Germans opposed racism. The Federal Ministry of the Interior had banned extremist parties and groups and joint governmental anti-racism efforts had successfully been carried out, including campaigns aimed at the education of young people. A computer game designed to teach children tolerance of foreigners had proved very popular. Furthermore, the German Bundestag had adopted a law in 1994 providing for measures to combat race-related violent crimes; that instrument had been a successful deterrent in that it enabled the courts swiftly to hand down harsh prison sentences. It was of course crucial that efforts to combat xenophobia and racism should continue to be made.

27. Programmes had been set up to provide special language courses for alien children, especially those who entered Germany in later childhood, and were designed to enable them to join their regular school level as quickly as possible. Unfortunately, alien juveniles often entered the workforce as unskilled labourers immediately after finishing school and were unlikely to enter vocational training programmes, thus diminishing their prospects of a better life. Programmes had therefore been undertaken by the Government to encourage alien youths to undergo vocational training had they achieved a

certain degree of success. Interestingly, even those alien children who had begun school in Germany at age six lacked sufficient skills with which to handle the technical language necessary for vocational training, despite their ability to cope well with everyday language. The Ministry of Education had published a bulletin to help alien juveniles understand technical language.

28. Minors seeking asylum in Germany were subject to the same procedure as adults. An unaccompanied minor child could act on his own behalf as of age 16; the guardianship court assigned a curator - a specially-trained social worker - to assist an unaccompanied younger child with the application process. It had been questioned whether those proceedings were suitably designed for children. In order to provide the Committee with an informed reply, he would have to consult his Government. Since the application procedure for women asylum-seekers was especially tailored to the needs of women, ensuring, for instance, that female officers and female interpreters were available, it seemed safe to assume that the same level of consideration was accorded to the particular needs of children.

29. It was the policy of the German Government to avoid detaining children while deportation procedures were pending. If a child was accompanied by his family, it was the mother or father who was detained. If the child was unaccompanied, every effort was made to avoid detention or to limit its length. The children of asylum-seekers did not, however, enjoy the right to enter Germany. Only once an application for asylum had been accepted could parents file entry applications for their children; at that stage, the relevant provisions were generous. In 1992, the last year before the revision of the law on asylum-seekers, 438,000 asylum-seekers entered Germany, or 80 per cent of the total number of asylum-seekers in the European Union. Of those, only 10 per cent had been permitted to stay: 90 per cent had been required to return to their home countries, having failed to demonstrate that they were victims of political persecution. In view of the proportions of the problem, it had been deemed unwise to strengthen the families of asylum-seekers by permitting children to join their parents.

30. The new Aliens Act had expanded the rights of migrant workers; for example, the entry of spouses and children into Germany no longer depended on the right of residence of the one who had arrived first. One of its provisions granted the children of migrant workers the right to return to Germany after their parents had resettled in their home country. While migrant workers enjoyed such voting rights as participation in the co-determination of companies or in worker management structures and in connection with matters related to social security, they did not have the right to vote in political elections at the local, Land or national levels. That policy was extremely controversial: many persons considered that foreign workers should at least be permitted to vote in local elections. In the view of the German Government, however, those workers who wished to remain in Germany should go through the process of becoming German nationals and thereby win the right to vote at all levels. The naturalization process had been simplified to two steps and would be made even simpler during the current legislative term. Furthermore, those who acquired German nationality would also enjoy the right to reside anywhere in the European Union.

31. The CHAIRPERSON said that Germany seemed to be encouraging aliens to seek German nationality so that they could most optimally benefit from legal protection. It would be useful to know whether that was an express policy decision taken in the interests of promoting the rights of children.

32. Mrs. KARP said that the public committee that had been convened to assess the matter of violence had determined that violence in the home and violence in German society as a whole were closely related. What stage had been reached in the process of amending the Civil Code in respect of disciplinary measures in the family? Did Germany's strategies for combating violence encompass the banning of corporal punishment?

33. The children of single-parent families in the eastern part of the country apparently suffered from many more problems than did those in such families in the western part. What measures were being undertaken to equalize standards of living in those two parts of Germany? What, in particular, was being done to equalize the quality of the service infrastructure?

34. It would be useful to know the age of medical consent for the treatment of children.

35. Mrs. SANTOS PAIS welcomed the recognition on the part of the German Government that a link existed between employment and social stability, a matter crucial to the protection of the child. The report nevertheless led her to conclude that, in German society, the question of the best interests of the child was not yet a concise policy area with a special strategy of its own. Unfortunately, it seemed that, in Germany, children were not yet seen as full-fledged persons.

36. It was, of course, necessary for Germany to create a comprehensive policy in respect of children, its federal structure notwithstanding. She recommended that the Federal Government should apply the experience it had gained in its successful campaign against racism and xenophobia to the development of a similarly broad-reaching campaign in the area of children's rights.

37. Aliens who sought asylum in Germany were subject to the same procedure, whether they were adults or children. But adults were not the same as children and should definitely not be treated as such. Since children between the ages of 16 and 18 surely suffered from the same language difficulties as did those under the age of 16, it could be asked why those children were not also provided with curators to assist them in seeking asylum? Germany should consider the development of a legal apparatus for responding to the requests of asylum-seekers that would incorporate the special rights and needs of the child.

38. Article 13 of the Convention guaranteed the child the right to freedom of expression, but article 12 offered a crucially different element: the right of the child to be heard. It left to the discretion of the State not the matter of whether the child would be heard, but of how the child would be heard - directly or through a representative. Germany had not incorporated

into its legislation either a definition of that right or a procedure by which that right would be guaranteed. The concept embodied in article 12 had an important bearing on such matters as family law and refugee status.

39. Mr. HAMMARBERG said that Germany should consider undertaking a comprehensive study of its asylum and refugee policy for consistency with the terms of the Convention. German family-reunification policy differed depending on whether the child or the parent had been granted asylum status; that distinction did not seem fully justified. Germany's argument, namely, that a child with asylum status had no means to support his family, was not in keeping with the principle of the best interests of the child, who should certainly be with his family whenever possible. The German Government should furthermore consider revising its procedure with regard to the expulsion of children to a third country; UNHCR had recommended that an investigation should be conducted into the child's reception in the third country before such a decision was taken.

40. Prejudice against the Roma (Gypsy) community was a matter that was assuming serious proportions in Europe. In the interests of protecting Roma children, European Governments should develop pro-active measures to combat such prejudice, including educational programmes and the dissemination of information, and should consider the possibility of launching a broader European initiative.

41. The term "best interests of the child" had been rendered in the German report as "well-being of the child", but what had been lost in translation was the gist of the principle itself: the German report failed to come to grips with the notion of a conflict of interests in which the child's best interests came first.

42. Paragraphs 16 to 18 of the report emphasized the interests of the parents. There must, of course, be a balance between parents' interests and those of the child, but article 3, paragraph 1, of the Convention could be interpreted only as indicating that the child's interests should be paramount. The Government's written replies to the Committee's questions on article 3 merely referred to judicial proceedings. Yet article 3 was so central to the Convention that it might be worthwhile to look further into whether the principles it embodied were being fully implemented. Ensuring their implementation was not easy, but it made the difference between a static, minimalist approach to the Convention and a dynamic one.

43. Mr. WABNITZ (Germany) said the use of the phrase "das Wohl des Kindes", which had been translated in the report as "well-being of the child", had to be seen in a historical context. Children had not been considered as subjects of law or as being entitled to rights under the law until the early twentieth century. In the Civil Code and other legislation, "das Wohl" had originally been used in reference to physical well-being alone, but now the term was understood as referring to positive support for a child's development. He referred to section 1 of the Child and Youth Services Act, which indicated that children were entitled to support for their own education and the development of personal responsibility, that all child and youth services must seek to avoid discrimination, that support must be given to

parents in creating a child-friendly environment and that the protection of the child must be ensured. Germany's legislation on children could thus now be described as being comprehensive in outlook.

44. Questions had been asked about educational measures involving corporal punishment. Such measures should indeed be prohibited, but the applicable law was not satisfactory. At the most recent legislative session, efforts had been made to finalize a new draft, but without success. More progress would undoubtedly be made at the next legislative session.

45. It had been pointed out that the phenomenon of single parents was especially prevalent in the new Länder, and that was true. In the former German Democratic Republic, it had been relatively easy to obtain a divorce and more day-care centres and children's facilities had been available. He had already drawn attention to problems with the quality of staff in day-care centres; some of the buildings in which the centres were located and some of the equipment and installations used needed renovation, but those goals could not be achieved overnight.

46. It was also true that, when it had been discovered that day-care centres were overstaffed, the youngest staff members had been dismissed, with the result that the centres were now staffed primarily by older persons. In addition, in the former German Democratic Republic the training of staff for day-care centres had been based on the principle that children had to be integrated into socialist society at a very early age. The Federal Government took the view that day-care centres should promote the best interests of the child in every possible way. They should not simply provide for their physical needs, but should also offer education and guardianship. Model projects had been launched to improve the pedagogical content of courses for staff in kindergartens and to provide training for the specialized advisers and supervisory staff now regularly assigned to day-care centres.

47. Replying to the question on the age at which a child's consent was required for medical treatment, he said that it was usually around 14 or 15 years, but there was no formal age limit. The child's level of maturity was a determining factor.

48. Xenophobia was certainly a cause for concern. One important measure that was undertaken to combat the phenomenon was youth exchange programmes with neighbouring countries, members of the European Union and nations in central and eastern Europe. Such programmes helped to build bridges between children of different nationalities and were truly instrumental in reducing prejudices and hostility.

49. Replying to the question on safeguarding the interests of the child during court proceedings (para. 13 of the list of issues), he said that such matters were covered by the Non-Contentious Legal Proceedings Act, the Civil Code, the Social Code and the Youth and Child Services Act. Those instruments reflected the Government's policy that young people should be involved, to the extent their age allowed, in all decisions affecting them and should be acquainted with administrative and judicial proceedings and informed of their rights. The Government was promoting the involvement of young people in

administration and political action. In two Länder, for example, children's parliaments had been established and children could express their views in a number of committees at the local level. Though such measures were not feasible at the national level, it might be possible, for example, to have young representatives on committees that dealt with social and administrative matters.

50. On the question whether there was a full-fledged policy on children, he admitted that much needed to be done, at both the federal and the local levels, before that was the case. One step that could be taken was to launch a public awareness campaign to increase the public's understanding of the problem of violence against children.

51. Lastly, concerning the draft law on parents and children, he said progress would be made very soon on the basis of a specific proposal to be put forward by the Government.

52. Mr. HABERLAND (Germany) said that the Federal Government supported the naturalization of foreigners residing in Germany. In 1984, in reply to a question raised in parliament, the Government had indicated that, in the long run, no State could afford to have a large group of residents who were not naturalized. All the residents of a country should be involved in the political process and entitled to a voice in public affairs. The Government had made the naturalization process much easier in recent years and more would be done along those lines in the upcoming legislative period.

53. On the question of unaccompanied minors entering Germany, he said the youth welfare office at the young person's place of entry was responsible for determining which steps needed to be taken for his or her protection. Such offices operated on the basis of local self-administration, but were subject to supervision by State authorities. Through the offices, care and initial custody would be offered to the young person, an identity check would be carried out, the country of origin would be determined, the parents or previous care-givers would be identified, family conditions investigated and possible risks in the event of repatriation uncovered. If the young person had no relatives in Germany, but could not be immediately repatriated, the Guardianship Court would begin curatorship proceedings.

54. Clarifying a point he had made earlier, he said that a curator would be assigned to assist a minor under the age of 16 during the asylum-seeking procedure; a minor over the age of 16 could apply for asylum on his own. The granting of full legal capacity to persons over the age of 16 had been intended not as a disservice, but, rather, to acknowledge the rights and responsibilities of such persons and to enable them to act in their own best interests. A curator provided advice to unaccompanied minor foreigners, while the Guardianship Court determined whether a lawyer should be called in to safeguard their interests during court proceedings. A special law provided that a person without the necessary financial resources would not have to pay the costs of legal assistance. In protecting the interests of minors, the youth welfare offices cooperated closely with charitable, private and non-governmental organizations. In reply to the question whether any efforts

were being made to deal with asylum-seeking children on a broader scale - within the European Union, for example - he said that a poll of member States was now being taken on that very subject.

55. The question of international cooperation to protect the Roma people had been raised. The Roma were not considered a national minority in Germany, where the use of the term was confined to groups that had resided for many years in a settlement area. Nevertheless, when signing the convention designed to protect national minorities and drafted by the Council of Europe, Germany had stipulated that the Roma would be covered by it.

56. Mr. KOLOSOV noted that his own country had imported atheistic views from Germany and had re-exported such views to the German Democratic Republic. Many parents in the new Länder were probably atheists and, if religious instruction was compulsory in primary schools, that must raise serious problems. He requested clarification on that point.

57. Paragraph 13 (f) of the report indicated that, at the age of 10, a child must be heard prior to a change in religious denomination, but gave no indication of what happened once the child had made his views known and he would like further information on that point. He would also welcome elucidation of the statement in paragraph 13 (g) that, at the age of 12, a child could no longer be forced to take religious instruction in another denomination against his will. The measure referred to in paragraph 13 (i) (iii), under which children could freely choose their religious denomination at the age of 14, except in the Land Bavaria, where they had to be aged 18 to do so, did not seem to be in keeping with article 14, paragraph 3, of the Convention. Had the Federal Government made any attempt to alert the Bavarian authorities to that anomaly?

58. Mrs. EUFEMIO said she was impressed by the extensive financial support programmes which enabled children in difficult situations to remain in their homes under the care of their parents. The incidence of single parenthood was increasing, however, and she wished to know whether there were any programmes to ensure that children of single parents could be cared for in the home and whether any steps were taken to provide emotional support for such parents as a necessary counterpart to financial support.

59. Mrs. SARDENBERG, referring to the question of unaccompanied minor asylum-seekers, asked for comments on the "airport" provision under which child applicants for political asylum were interned in airports pending verification of the grounds for application and on how that measure could be reconciled with articles 3, 20 and 22 of the Convention.

60. The CHAIRPERSON, following up on that question, suggested that the German delegation might explain the system for monitoring the implementation of legislative provisions by technical and administrative services.

61. Mr. HAMMARBERG noted that article 17 of the Convention was intended to encourage positive initiatives with regard to children and the media and pointed out that the film, video and television centre located in Munich was an excellent example of such an initiative. Its constructive output was very welcome. Article 17 also required States to provide protection against media

abuse and that often constituted a dilemma for societies committed to the independence of journalism and the media. The written replies of the German Government on that matter mentioned self-censorship within the media and guidelines worked out by editors and publishers themselves. If article 17 was to be implemented in full, however, State authorities must monitor the effective application of such voluntary measures. Had the Government evaluated the impact of such measures?

62. The German delegation had emphasized the need for strong efforts to stem domestic violence, yet paragraph 40 of the report reflected an emphasis on avoiding intervention in the family. There was a danger that such caution, commendable in most contexts, would enable abuse to continue longer than if intervention had been swift and he asked whether any steps had been taken to ensure that bureaucratic procedures, for example, did not result in abuse being prolonged.

63. Mrs. KARP said she had asked about the age of consent to medical treatment because it had a bearing on the implementation of many other rights, including the right to privacy and protection of the child's interests. She would like to know what services were offered to children who wished to consult a medical doctor or psychologist in the event of parental abuse, in order to cope with drug use or in order to undergo AIDS testing or treatment.

64. Mrs. SANTOS PAIS said she agreed that formulating policies for children was bound to be a lengthy process. She would nevertheless urge that time-limits should be fixed and specific targets set in order to encourage social mobilization and Government action on specific problems.

65. On the question of aliens, refugees and asylum-seekers, the argument that children over the age of 16 should be given legal recognition as adults on the grounds that their capacities were fully developed was in many ways a positive one. However, care should be taken to ensure that recognition did not prevent children between 16 and 18 from enjoying their rights to protection under the Convention. As had already been pointed out, the report had a tendency to categorize children according to age group, and that might in practice make it difficult to be flexible and to take account of the best interests of each individual child.

66. As to abuse and neglect within the family, she welcomed the research done by Germany on a problem which had long been taboo. While the privacy of children should be safeguarded, there was a need for a comprehensive preventive strategy, including both social and legal measures. She noted from paragraph 60 of the report that it was intended to amend the Civil Code to make a clearer distinction between disciplinary measures that were permitted and those that were prohibited. However, some countries had found, in attempting to make that distinction, that a certain subjective element was unavoidable. Would it not be preferable simply to prohibit any form of corporal punishment by parents, while at the same time educating them in the use of non-violent alternatives?

67. Mr. WABNITZ (Germany), replying to questions, said that the issue of religious teaching in schools in Germany was a highly complex one. The parents decided the religious belief of the child for as long as it was unable

to decide for itself. However, article 4 of the Basic Law provided that a child of 12 years of age could not be forced to receive religious instruction against its will and, by 14 years of age, a child was legally entitled to decide what religious belief, if any, it wished to adopt.

68. In so far as the role of the State in matters of religion was concerned, article 4 of the Basic Law was again valid, but the situation was complicated. On the one hand, the State was seen as neutral with respect to religion, while, on the other, an intense relationship between Church and State had existed in Germany ever since the Middle Ages. Certain contracts between State and Church, both Catholic and Protestant, still held: thus, the State still collected taxes from the Church and teachers of religion were appointed by the Church, but paid by the State.

69. The situation was further complicated by the fact that regulations in the matter were not uniform, but differed from Land to Land. In some Länder, religion was a compulsory subject in schools, in others not. On average, 20 per cent of children belonged to a particular denomination, 4 per cent Catholic and 16 per cent Protestant, while 80 per cent did not subscribe to any religious belief. However, church membership was on the decline and it was likely that the relationship between State and Church would change further over the next decade. In general, the Länder resented interference on the part of the Federal Government in educational policy in general and in religious teaching in particular. There were also political aspects to the question: for instance, an intense debate was currently raging on whether schools in Bavaria should continue to hang crucifixes in the classroom.

70. Another question had concerned the extent to which parents could offer children an environment of loving care. Inevitably, now that parents were no longer able to centre their lives on their children, especially when mothers pursued careers, children did not receive the amount of loving care they had enjoyed in the past. That, together with the problem of single-parent families, was indeed a matter of concern. The rise in the divorce rate was also an unfortunate factor of modern life. Marriage was no longer seen as a life-long institution and was on the decline, particularly in the former German Democratic Republic. The Government was doing all it could to encourage marriage and offered very substantial tax concessions to married couples, although that was not necessarily the best approach, since many children were not now brought up by married parents.

71. The Government was also doing its best to stabilize family life and there were a number of programmes providing assistance to mothers and children. A scheme had been introduced to reduce the disproportionate financial burden falling upon single-parent families, but more needed to be done in that direction.

72. The Federal Government was responsible for protecting children from harmful literature or published material and had powers to put publications on the index list. On the other hand, the prohibition of harmful video cassettes, films and television was the responsibility of the Länder. The situation was likely to become more difficult in the near future as new forms of mass media came onto the market, particularly computer programmes.

Television was becoming more international and a wide variety of programmes could now be received in Germany from many different European countries, so that national protection had become virtually impossible.

73. He was not able to say whether the regulations currently in force gave sufficient protection and, to his knowledge, no particular study was being carried out on the subject. However, it was clear that legislation was not enough and that preventive education was also needed. The State could not control everything: it was up to parents to be watchful and to see to it that their children used the media in a responsible way.

74. On the matter of intervention in cases of sexual abuse, children could be removed from their families only in the circumstances specifically provided for under section 1666 of the Civil Code. Such intervention was seen as a very last resort, after efforts at prevention and assistance to the family had failed. It was true that there was always a risk that intervention might come too late and it was often difficult to strike the proper balance. In fact, campaigns were currently being waged in Germany against the premature removal of children from families where there was a suspicion of sexual abuse and the rights and wrongs of intervention were fiercely disputed. There could be no doubt, however, that more help to families and more training for youth officers, social workers and administrators was the solution and much was already being done in that area. The decision was always a difficult one and would always have to be taken on a case-by-case basis.

75. A question had been asked about the age at which a child could give its consent to a medical examination. He did not think that that issue gave rise to any problem, since, where general health care was concerned, the interests of children and parents could be assumed to be the same. Of course, in cases of sexual abuse within families, the interests of parents and children would be in conflict and, in such cases, children could, without the consent of their parents, turn to one of the many institutions and centres giving help and advice.

76. Lastly, the question of corporal punishment of children was currently under discussion in Germany and it was intended to tighten up the law on the matter. There was also a need to change the attitudes of parents and teachers, although those attitudes were already very different from those of the previous generation. In general, it was an unfortunate fact that violence against children still occurred and his Government was giving high priority to increasing public awareness of the problem.

77. Mr. HABERLAND (Germany) said that questions had been raised regarding the regulations governing attempts to enter Germany via an airport and on the 1993 reform of the law on asylum-seekers. In 1949, a very generous law on asylum had been introduced as a result of experiences under the Nazi regime, when many had been able to survive only by seeking refuge in other countries. That law, which was more far-reaching even than international law, provided that any persons suffering political persecution were entitled to seek asylum in Germany. They could have their case considered by the responsible authorities and, in the event of a refusal, were entitled to take those authorities to court. Since such persons had been allowed to stay in the country for a considerable time pending a decision, it had often proved

difficult to return them to their countries. That had led to a situation whereby, some years previously, Germany had received some 38,000 applications for asylum, of which only 10 per cent had been recognized and the public had begun to feel that the right to asylum was being abused.

78. At the end of 1992, agreement had been reached in Parliament on the so-called "asylum compromise". Rights to asylum were retained, but were made subject to certain restrictions relating in particular to persons entering Germany via a "safe" third country, in which it was assumed that asylum could initially have been sought. Restrictions also applied to persons from a "safe" home country where it was deemed that no political persecution existed.

79. The regulations governing entry via airports required applicants to undergo asylum proceedings in the transit area of the airport, without being allowed to enter the country. A list of countries now considered to be "safe" had been drawn up in 1993 and included Gambia, Ghana, Hungary, Poland, Romania, Senegal and Slovakia. That list was altered from time to time according to developments in the countries concerned. Thus, Gambia had now been deleted, since it was considered that political persecution existed there. The airport regulations also applied to persons seeking asylum without a valid passport. The case of such persons would be dealt with by the Federal Office for the Recognition of Refugees, which would grant asylum if the requirements were met.

80. Airports had reception facilities for asylum-seekers and special provision was made for young people and unaccompanied children. In the first 7 months of 1995, 44 young people under the age of 16 had sought entry into Germany via Frankfurt airport and all had been granted admission and placed in the care of youth centres. The cost to the Government of accommodating such children was between DM 2,000 and DM 7,000 per month and it was likely to continue to be incurred over a number of years.

81. Mr. HAMMARBERG said he agreed that there was a need for a comprehensive approach to the problem of domestic abuse. While information and education were important, however, it was equally important to establish clear procedures so that teachers, doctors and social workers were in no doubt as to when they had an obligation to report a case to the authorities. The best interests of the child should come before traditional respect for secrecy.

82. Did the change in the law relating to custody mean that there was now no distinction between children of married parents and children of unmarried or divorced parents? On adoption procedures, had Germany taken account of the right of the child to know his or her origins? As part of its measures to control child pornography, had the Government equipped the police with sufficient resources to enable them to make investigations?

83. Mr. KOLOSOV pointed out that the problem was not the possible harmful effect of the large number of television programmes being broadcast by different European countries because that issue was already regulated by the Convention on Transboundary Television adopted by the Council of Europe and by a directive of the European Union. The problem was, rather, how children were to be protected from the possible harmful effects of cable television, videos and printed matter.

84. Mrs. SANTOS PAIS said that, while she agreed that laws on corporal punishment were not a complete solution, they did send out a clear message to the public. In that matter, too, the Convention should be used as a tool to educate and to change attitudes.

85. With regard to Germany's airport regulations, there was a need to consider the best interests of the child when deciding cases in which, for instance, the child's family was already in the country. Immigration officers and police should be given special training to ensure that the provisions of article 37 of the Convention were respected when children were being held at airports.

The meeting rose at 6 p.m.